

FIRST REGULAR SESSION

HOUSE BILL NO. 714

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES COOPER (155) (Sponsor), CUNNINGHAM (145), STEVENSON, JONES (89), ERVIN, SCHAAF, SCHAD, DUSENBERG, ONDER, EMERY, THRELKELD, BRUNS, NIEVES, STREAM AND THOMSON (Co-sponsors).

Read 1st time February 1, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

1481L.01I

AN ACT

To repeal section 527.260, RSMo, and to enact in lieu thereof one new section relating to lis pendens.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 527.260, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 527.260, to read as follows:

527.260. **1.** In any civil action, based on any equitable right, claim or lien, affecting or designed to affect real estate, the plaintiff shall file for record, with the recorder of deeds of the county in which any such real estate is situated, a written notice of the pendency of the suit, stating the names of the parties, the style of the action and the term of the court to which such suit is brought, and a description of the real estate liable to be affected thereby; and the pendency of such suit shall be constructive notice to purchasers or encumbrancers, only from the time of filing such notice. The recorder shall note the time of receiving such notice, and shall record and index the same in like manner as deeds of real estate are required to be recorded and indexed.

2. Any party seeking a written notice of the pendency of the suit under this section shall commence the underlying proceeding by means of a verified complaint or other complaint as is required under the rules of court to include a certification by the claimant made under the penalties of perjury that the complainant has read the complaint, that the facts stated therein are true, and that no material facts have been omitted therefrom. The

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

14 complaint shall name as defendants all owners of record and any party in occupation
15 under a written lease. Upon motion of a party, if the subject matter of the action
16 constitutes a claim of right to title to real property or the use and occupation thereof or the
17 buildings thereon, a judge of the court in which the action is pending shall make a finding
18 to that effect and endorse the finding upon the memorandum of lis pendens.
19 Notwithstanding the preceding sentence, the court on its own motion may decline to
20 endorse the memorandum of lis pendens, if the court does order the temporary equitable
21 relief as will preserve the status quo pending further proceedings. If the memorandum is
22 approved ex parte, it shall contain an additional finding that either the defendant is not
23 then subject to the jurisdiction of the court in that action, or there is a clear danger that
24 the defendant, if notified in advance of the endorsement of the memorandum, will convey,
25 encumber, damage, or destroy the property or the improvements thereon. A recorder of
26 deeds shall not accept for recording or registration a memorandum under this section,
27 unless it contains the endorsement and is accompanied by an affidavit stating that the
28 plaintiff or his or her attorney has served notice of the allowance thereof by certified mail
29 addressed to all parties to the action.

30 3. If the memorandum is approved ex parte, any party aggrieved thereby may move
31 at any time for dissolution of the memorandum, and the court shall hear the motion
32 forthwith and in any event not later than five days after the date on which notice of the
33 motion was given to the claimant. At the hearing the claimant shall have the burden of
34 justifying any finding in the ex parte order that is challenged by the party who is aggrieved
35 thereby. A party may also file a special motion to dismiss the claimant's action if the party
36 believes that the action or claim supporting the memorandum of lis pendens is frivolous.
37 The special motion to dismiss shall be granted if the court finds that the action or claim is
38 frivolous because it is devoid of any reasonable factual support; it is devoid of any arguable
39 basis in law; or the action or claim is subject to dismissal based on a valid legal defense
40 such as the statute of frauds. If the court allows the special motion to dismiss, it shall
41 award the moving party costs and reasonable attorneys fees, including those incurred for
42 the special motion, any motion to dissolve the memorandum of lis pendens, and any related
43 discovery. Nothing in this section shall affect the right of the moving party to any other
44 remedy otherwise authorized by law.

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